UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIA E. CRAIGHILL, Individually and as Personal Representative of the Estate of Sornratana Goodluck Tembunkiart,	)	
Plaintiff,	)	
v.	)	**Civil Action No. 01-1229 (RMC)**
CONTINENTAL CASUALTY COMPANY, *et al.*,	)	
Defendants.	)	

MEMORANDUM OPINION

This is an action arising under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001 *et seq*. The plaintiff, Ms. Julia E. Craighill, claims entitlement to $525,000 in Broad Business Trip Coverage benefits as beneficiary of a policy of insurance issued by defendant Continental Casualty Company (Continental) to RTKL Associates, Inc. (RTKL), the former employer of Ms. Craighill's deceased husband.[1] Ms. Craighill claims that her husband was killed while on a business trip for RTKL and, therefore, benefits are payable under the policy. RTKL claims that it is not liable for payment of the benefits because Continental has the sole obligation to pay benefits that become due under the terms of the policy. Continental in turn claims that Ms. Craighill's husband was killed while traveling from work to home and, therefore, benefits

[1] As initially filed, the complaint named Ms. Craighill as the plaintiff Individually and as Personal Representative of the estate of her husband. The complaint also named RTKL as a defendant. In her cross-motion for summary judgment and opposition to Continental's motion for summary judgment, Ms. Craighill has agreed that she is the sole and correct plaintiff. The Court therefore grants summary judgment to Continental and RTKL with respect to all of Ms. Craighill's claims asserted in her capacity as Personal Representative of the Estate.

are not payable.

Having fully reviewed the briefs of the parties and the entire record herein, the Court finds that Continental properly denied Ms. Craighill's application for benefits under the Broad Business Trip Coverage plan and has not violated ERISA. The Court grants Continental's motion for summary judgment and denies Ms. Craighill's cross motion for summary judgment. In addition, the Court finds that RTKL has no obligation to pay benefits because Continental has the sole authority to administer the claims process and determine benefits eligibility. The Court therefore grants RTKL's motion for summary judgment and denies Ms. Craighill's motion for summary judgement.

Background Facts

The decedent, Sornratana Goodluck Tembunkiart, was a Vice President of RTKL and worked in RTKL's Washington, D.C., office.[2] On Sunday, September 20, 1998, Mr. Tembunkiart drove from his Chevy Chase residence to RTKL's Washington, D.C. office. After working quite late into the evening, Mr. Tembunkiart left work to drive home. At approximately 12:05 a.m. on September 21, 1998, while en route to his home, Mr. Tembunkiart was involved in a vehicular collision and died shortly thereafter.[3] Mr. Tembunkiart was 44 years old at the time of his death.

As an officer of RTKL, Mr. Tembunkiart was covered by policy number SR-83106275 ("Policy") issued by Continental to RTKL with a term beginning May 1, 1998 and ending May 1,

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[2] These facts are taken from Continental's Statement of Material Facts, which are not controverted by Ms. Craighill, and from the documents submitted by the parties. The Court notes that in its Statement of Material Facts and Memorandum in Support of the Motion for Summary Judgement, Continental incorrectly stated the dates for the events surrounding Mr. Tembunkiart's accident. The correct dates with respect to these events are Sunday, September 20, 1998, and Monday, September 21, 1998. This error does not change the Court's evaluation of the case.

[3] The record indicates that his car was struck by a stolen vehicle that ran a red light. The occupants of the stolen vehicle were not apprehended.

1999. Under the Policy, Continental has the sole authority to administer the claims process and determine whether benefits are payable. In the event a covered loss results in death of an insured person aged 69 or younger, and all other terms of the Policy are met, $500,000 becomes payable to the insured person's beneficiary. Mr. Tembunkiart had designated Ms. Craighill as his beneficiary.

The Policy provided Broad Business Trip Coverage, described as follows:

> This Description of Hazards covers the Insured Person for injury sustained while on a business trip made on behalf of the Holder (excluding vacations and travel to and from work).
>
> The trip shall begin when the Insured Person leaves his residence or regular place of employment, whichever last occurs, for the purpose of going on the business trip.
>
> Such trip shall end on the first of the following to occur:
>
> 1. when the Insured Person returns to his residence; or
> 2. when the Insured Person returns to his regular place of employment.
>
> Coverage provided under this Description of Hazards includes riding as a passenger in any aircraft being used for the transportation of passengers, subject to the EXCLUSIONS below.
>
> The term 'on a business trip made on behalf of the Holder' as used in this Description of Hazards means travel and sojourn authorized by or at the direction of the Holder for the purpose of furthering the business of the Holder.

The Policy also provides that payments will be made only after Continental receives "due written proof of loss."

By letter dated October 6, 1998, RTKL sent Continental various documents in connection with Ms. Craighill's claim for benefits under the Policy. These included a Claimant's Statement for Accidental Death signed by Ms. Craighill on October 4, 1998. In response to the question, "What was the deceased doing at the time of the accident?" Ms. Craighill responded, "driving home."

Defendants' Stmt. of Material Facts Not in Dispute ¶ 18. In the cover letter from RTKL to Continental, RTKL advised, "Mr. Tembunkiart was a Vice President with our firm and was traveling home after working in our Washington, D.C. office at the time of the accident." *Id.*

By letter dated November 5, 1998, Continental notified Ms. Craighill that her claim had been denied. It explained that the information it received indicated that Mr. Tembunkiart "was commuting back to your home on Sunday night after working at his office that day and as commutation is not covered by the business travel policy, we are unable to allow a payment." *Id.* at ¶ 19. Continental advised Ms. Craighill of her appeal rights.

By letter dated December 21, 1998, Ms. Craighill requested reconsideration of Continental's decision, asserting that "Mr. Tembunkiart was not commuting at the time of this unfortunate collision that led to his death," so the Policy covered his death. *Id*. at ¶ 20 (emphasis on original). On December 24, 1998, Continental asked for further information to support the request for reconsideration "since the information we have been given by his employer is that he was working at his regular place of employment on the day of the accident and that he was returning home from that office when the accident occurred." *Id*. at ¶ 21.

Through counsel, Ms. Craighill responded on June 2, 1999, that her husband

> was on a business trip that began earlier that day when he left his residence, and would not have concluded until he returned to his residence. He was not involved in 'travel to and from work,' and had not been working at his regular place of employment. Mr. Tembunkiart had been requested by his employer to work on Sunday, September 20, because of work needed, and a presentation to be made on Monday September 21, regarding the U.S. Capitol Visitor Center. This was not regular work for him.

Id. at ¶ 22 (emphasis in original).

Counsel later supplied copies of the cases on which he based his argument that coverage existed under the Policy because "[t]his was not regular work for him."[4]

After review of the request for reconsideration and the case law, Continental refused to change its mind. Despite further appeals, benefits were denied. Finally, by letter dated January 11, 2000, Continental advised that a "comprehensive review of the claim has been completed and we have determined that the Company's decision to deny benefits was correct." *Id.* at ¶ 27.

This lawsuit was filed the following June.

Claims Against RTKL

In her Complaint Ms. Craighill asserts both RTKL and Continental have breached the insurance contract and are obligated to pay the full amount of coverage. *See* Compl. ¶¶ 19-20. RTKL argues that it is not a proper party defendant because Ms. Craighill admittedly made the claim for coverage to Continental, not RTKL, and that Continental, not RTKL, denied the claim. RTKL further argues that Continental has the sole obligation to pay Plaintiff's claim and RTKL therefore could not have breached any contractual obligation. The Court agrees with RTKL.

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[4] In response to written interrogatories, attached to her cross-motion for summary judgment, Ms. Craighill explained the facts that support her theory that Mr. Tembunkiart was on a covered business trip:

> During weekdays, Monday through Friday, the decedent Sornratana Goodluck Tembunkiart, who was a Vice President with RTKL Associates Inc, [sic] left the house at approximately 8:00 a.m. to go to work and returned home from work at approximately 6:30 p.m. The decedent sometimes would work on weekends. The reason the decedent was working during the late hours on the aforesaid Sunday evening was because he had been contacted by a client of RTKL Associates, Inc., and said client requested the decedent to perform work in preparation for a meeting scheduled for Monday morning, September 21, 1998.

Cross-Motion for Summary Judgment, Exh. 7 at 2.

Unless a plaintiff shows that an employer controls the administration of an ERISA plan, that employer is not a proper party to a suit arising under 29 U.S.C. § 1132(a)(1)(B). *See, e.g.*, *Layes v. Mead Corp.*, 132 F.3d 1246, 1249-50 (8th Cir. 1998); *Best v. Nissan Motor Corp.*, 973 F. Supp. 770, 775 (M.D.Tenn 1997); *Marcum v. Zimmer*, 887 F. Supp. 891, 894 (S.D.W. Va. 1995). Ms. Craighill has not shown that RTKL in any way controls or influences the administration of claims filed under the Policy. Rather, the evidence shows that RTKL merely forwarded the requisite claim documents to Continental, and was not involved at all in the decision to deny benefits. All the correspondence that followed was between Ms. Craighill and CNA Group Benefits. Because Ms. Craighill has presented no evidence that RTKL controls the administration of the plan, RTKL is entitled to judgment as a matter of law.

Legal Standards

The parties disagree as to which of two standards of review under ERISA should be applied by the Court.

Continental argues that the Policy's requirement that a claimant submit "due proof" of loss is sufficient to give it discretion and entitle it to deferential review under an "arbitrary and capricious" standard. *See Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989) (normal review of benefit denials is *de novo* but if the terms of a benefit plan give the administrator discretionary authority to determine eligibility, an arbitrary and capricious standard is applied); *Block v. Pitney Bowes, Inc.*, 952 F.2d 1450, 1453 (D.C. Cir. 1992) ("no magic words" required to establish discretion).

Ms. Craighill cites *Firestone* but also relies on *Fitts v. Federal National Mortgage Association*, 236 F.3d 1 (D.C. Cir. 2001), and its holding that requiring "proof of eligibility" does

not confer sufficient discretion because such proof is required under nearly every insurance policy and the exception would swallow the rule. She also notes that the *Fitts* court cited with approval *Herzberger v. Standard Ins. Co.*, 205 F.3d 327, 332 (7th Cir. 2000), which found that a requirement of "satisfactory proof" was insufficient to confer true discretion. She argues that "due proof" and "satisfactory proof" are one and the same and that the Court should apply *de novo* review to the denial of benefits here.

The Court finds that the exact standard of review does not have to be determined because, under either formulation, it would find that Continental legitimately denied Ms. Craighill's claim.

Analysis

Arguing for a *de novo* review of Continental's decision to deny benefits, Ms. Craighill relies on "the case law interpreting the pertinent terms contained in the policy at issue," *i.e.*, *Duffer v. American Home Assurance Co.*, 512 F.2d 793 (5th Cir. 1975); *McNeilly v. Lumbermens Mutual Casualty Co.*, 647 F. Supp. 1567 (E.D. Mich. 1986); *Ligo v. Continental Casualty Co.*, 338 F. Supp. 519 (W.D. Pa. 1972); and *Morningstar v. Insurance Co. of North America*, 295 F. Supp. 1342 (S.D.N.Y. 1969). These are the cases Ms. Craighill cited to Continental during the appeal process. Unfortunately for Ms. Craighill's argument, each of the cited cases is readily distinguishable because the pertinent terms are different from the Policy.

To recap, the Policy stated that "travel to and from work" was excluded from coverage. In *McNeilly*, the policy excluded coverage for "day to day travel to and from work." 647 F. Supp. at 1568. The insured in *McNeilly* normally worked Monday through Friday but was killed on his way to work on a Saturday morning. The court concluded that Saturday travel

"represented a deviation in time" from "day-to-day" travel. *See* 647 F. Supp. at 1569. The policy in *Duffer* excluded coverage for "every day travel to and from work," which the Fifth Circuit determined did not include evening work outside the norm where the insured deviated from his normal route of travel. *See* 512 F.2d at 797. *Ligo* also involved a travel insurance policy that excluded coverage for "everyday travel to and from work." 338 F. Supp. at 520. *Morningstar* excluded coverage for "commutation travel," 295 F. Supp. at 1343, but the insured was traveling in the morning from his home to the office of a company with which he sought to conduct business on behalf of his employer. The court held that this was not his regular commute and therefore the exclusion did not apply. *Id.* at 1345.

The Policy excludes all travel to and from work without the nuances of descriptors contained in the cases upon which Ms. Craighill relies. Thus, while it is true the Mr. Tembunkiart was working on a Sunday evening outside his normal business hours, he was in fact and as admitted in transit between his normal office and his home at the time of his death. Because the Policy language has a plain and ordinary meaning, the Court is constrained to apply it as written and deny benefits.[5]

It is true that Continental repeatedly referred to the exclusion as a "commutation" exclusion in its correspondence with RTKL and Ms. Craighill. Were that term contained in the Policy itself, the interpretation of *Morningstar* might apply. However, it is the Policy language that governs and the Policy excludes "travel to and from work" without any limitation as to time,

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[5] The Court finds that the language here is not ambiguous and that it fulfills the mandate of ERISA that it "be written in a manner calculated to be understood by the average plan participant." 29 U.S.C. § 1022(a)(1). Therefore, there is no occasion to apply the doctrine of *contra proferentum* under which ambiguous terms in an insurance contract will be ordinarily construed against the insuror. *Cf. Morningstar*, 338 F. Supp. at 1345.

day of the week, hour of the day or habit of the insured. Because the language of the Policy is unambiguous, the Court will not look to the extrinsic evidence found in the correspondence to create ambiguity. *See District-Realty Title Ins. Corp. v. Ensmann*, 767 F.2d 1018, 1022 (D.C. Cir. 1985) (courts may not consider extrinsic evidence to alter the terms of an unambiguous contract, and ambiguity does not exist merely because parties disagree over the meaning of a term).

Reviewing *de novo* the decision to deny benefits, the Court finds that denial was proper because Mr. Tembunkiart was traveling between his normal office and his home at the time of his death, which falls within the unambiguous Policy exclusion for "travel to and from work."

If, as Continental argues, the arbitrary and capricious standard of review applies, the result is the same. Under this deferential standard of review, the focus is on the reasonableness of Continental's claim determination. *Block*, 952 F.2d at 1454 ("The reasonableness of the Plan Committee's decision is our polestar . . . ."). Because the Policy clearly and unambiguously does not cover losses occurring during "travel to and from work," and Mr. Tembunkiart was definitely and admittedly traveling from work to his home on the occasion of the accident that caused his death, the Court cannot conclude that Continental was unreasonable in denying benefits to Ms. Craighill.

Conclusion

For the above-stated reasons, RTKL and Continental's motion for summary judgment [21] is **GRANTED** and Ms. Craighill's cross-motion for summary judgment [23] is **DENIED**.[6]

A separate order will accompany this memorandum opinion.

ROSEMARY M. COLLYER
United States District Judge

Date: March 5, 2003

[6] Given this outcome, Ms. Craighill's claim for 6% prejudgment interest on the benefit payment is moot. The Court notes that Ms. Craighill also asserts a right to a $25,000 payment under the Policy's Safe Driving Benefit because her husband was not intoxicated, was wearing a seat belt, and had an air bag. Under those circumstances, the Policy stated that it would pay "an amount equal to the lesser of $25,000 or 10% of the Insured's Principal Sum." Ms. Craighill received $171,000 as a death benefit and 10% of that amount, or $17,100, for "Seat Belt-Safe Driving." According to the plain terms of the Policy, since 10% of her death benefit payment was less than $25,000, that was the appropriate amount to be paid.